

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-HC-2066-BO

TERRENCE LOWELL HYMAN,)	
)	
)	
)	ANSWER TO PETITION FOR
Petitioner,)	WRIT OF HABEAS CORPUS
v.)	Habeas Rule 5, 11
)	
ALVIN W. KELLER, JR., Sec.,)	
North Carolina Dep't of)	
Correction,, ¹ et al.,)	
)	
Respondents.)	

1. Response to Allegations. The allegations contained in Petitioner's federal habeas application are denied for the reasons stated in the memorandum filed in support of this answer and corresponding motion for summary judgment, except to the extent they may be admitted therein. Respondents' supporting memorandum is incorporated by reference as if fully set forth herein. Respondents contend that all of Petitioner's allegations are meritless. Respondents deny that any of Petitioner's contentions or assertions contained in his federal habeas application form or any supporting documents entitle him to a writ of habeas corpus.

2. Exhaustion. Respondents' procedural-default/nonexhaustion defenses, if any, are discussed in the supporting memorandum.

3. Exhibits and Transcript. Respondents submit exhibits, including the pertinent

¹ When Petitioner filed his § 2254 petition, he named as Respondent Theodis Beck, then Secretary of the North Carolina Department of Correction. In the interim, Mr. Beck retired, and Mr. Alvin W. Keller, Jr., was appointed and sworn in as the Secretary. Accordingly, under Rule 25(d) of the Rules of Civil Procedure, Mr. Keller's name is automatically substituted as Respondent. See Fed. R. Civ. P. 25(d) (2009) ("An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party.").

state-court records not previously submitted by Petitioner, in support of this answer. Respondents further submit a copy of Petitioner's multi-volume trial transcript. These materials were not served on Petitioner's counsel of record because, upon inquiry from the undersigned, counsel indicated that they were already in possession of the materials and did not wish to receive additional copies.

4. Demand for Relief. For the reasons above, as supplemented by the memorandum filed in support of this answer and corresponding motion for summary judgment, Respondents request Petitioner's application be denied summarily, without further inquiry or argument other than the reply comprehended by 28 U.S.C. § 2248.

Respectfully submitted, this the 2nd day of March, 2009.

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